cestui is himself the settlor. Whether this rule should be relaxed in favor of a married woman was the question before the court.

At one time, before any statutory alterations in the law of married women, the difficulty experienced in some jurisdictions was not in limiting the power of the wife to charge or to alien her separate estate, but in removing, in reference to such estate, her common law incapacity to bind herself by contract. *Price* v. *Bigham*, 7 Har. & J. 296, 317. The husband's control was expressly excluded by the terms of the settlement; the wife was regarded as possessing no will of her own. Consequently, effect was readily given to the clause against anticipation. If such restraints are to be thus explained as a common-law disability of coveture which equity has not removed, it may well be urged, now that most of such incapacities have been abolished by statute, that the restraint on alienation should be enforced only when it would be effective if the *cestui que trust* were unmarried. Judged by this criterion, the clause prohibiting alienation, in the principal case, would as above stated be clearly inoperative. By this line of reasoning, it may, perhaps, be possible to support the decision, as well as similar adjudications in Massachusetts and Pennsylvania. *Jackson* v. *Van Zedlitz*, 136 Mass. 342. In those States, apparently no distinction is taken between married women and persons *sui juris*, so far as the validity of limitations on the power of alienation is concerned.

If this view were adopted in jurisdictions in which spendthrift trusts have obtained no foothold, the clause against anticipation, even a settlement to the separate use of a married woman, would, of course, always be held invalid. This result has been avoided, and such restraints enforced, on the ground that they are necessary to prevent the husband from obtaining the benefit of his wife's property by means of undue influence. The historical development of the subject in England gave support to this theory. The doctrine of the separate use was established in that country long before the prohibition of anticipation was introduced by Lord Thurlow. Consequently, that restriction was looked upon as a further "violation of the laws of property," which could be justified only as necessary to protect the *cestui* from the threats or persuasion of her husband. *Tullett* v. *Armstrong*, 4 Myl. & C. 377, 405. This danger being equally great where the wife is herself a settlor, the question of the principal case has, without hesitation, been decided in favor of the restraint. *Clive* v. *Carew*, 1 Johns. & H. 199, 205.

This English rule which allows a woman in contemplation of marriage to place her property in perfect security from the cupidity of her husband and from her own generosity, is more consonant with the spirit of our equity jurisprudence. It is remarkable that this protection which is granted in England, where restraints on alienation are viewed with hostility, should be refused by those courts in this country which regard spendthrift trusts without disfavor. The result is an instance of the confusion which departures from settled principles of law usually occasion.

IMPLIED RESERVATION OF EASEMENTS. — When a land-owner sells a portion of his estate by absolute conveyance, if no access remains to the part retained except through the part sold, all jurisdictions hold that a way is reserved or regranted by implication. This rule is based on the

necessities of the case and the impolicy of reducing any land to a state of absolute uselessness. The English courts go little, if any, beyond this point. The law in England was settled by the case of *Suffield* v. *Brown*, 4 De G., J. & S. 185, that easements are impliedly reserved only where the property cannot be enjoyed without such reservation. The Supreme Court of Maine, where this rule has been followed, recently has had to apply it to an unusual state of facts before them in *Hildreth* v. *Googins*, 39 Atl. Rep. 550. The owner of a lot, bounded on one side by a highway and on the other by the ocean, sold that half of the estate which adjoined the highway without expressly reserving a way across it from the highway to the part he retained. No access could be had to the unsold portion except by the ocean or by crossing land of other owners. The Court said that implied reservations were not to be favored except in cases of strict necessity, that the ocean was a public highway, and as all communication was not shown to be cut off, the grantor must in future rely on such access as the sea afforded. This decision is within the letter of the rule. But the difficulties which a farmer would have to surmount in utilizing this road would generally prevent any but the most primitive use of the land; and it seems that the court might well have refused to consider the sea as a way in the sense that a way is necessary to the farmer.

The English doctrine strictly enforced appears often to reach harsh results; and many American courts have recognized the need of a more flexible rule. The Supreme Court of Maryland in *Burns et al.* v. *Gallagher et al.*, 62 Md. 462, laid down a test that has much to commend it; namely, that the principles of implied reservation may be invoked when the necessity is so strict that it would be unreasonable to suppose the parties intended the easement in question should not be used. This test, which would satisfactorily dispose of the case under discussion, is easy of application, fair to both parties, and well suited to the needs of this country.

CITIZENSHIP OF CHILDREN OF ALIEN PARENTS. — The final word upon this phase of our law of citizenship seems to be said in the case of *United States* v. *Wong Kin Ark*, now in advance sheets. The Supreme Court of the United States, speaking by Mr. Justice Gray, held that one born of Chinese parents domiciled in California was a citizen, and could not be excluded from the United States, although he had twice returned to China. The Chief Justice and Mr. Justice Harlan entered a vigorous dissent. The case is of first impression in the Supreme Court; although the same opinion has been previously intimated. The decision follows a series of well-considered adjudications in the Circuit Court, where the law has long been regarded as settled by Mr. Justice Field in the case of *In re Look Ting Sing*, 21 Fed. Rep. 905. The dictum to the contrary of Mr. Justice Miller in the *Slaughter House Cases*, 16 Wall. 73, must now be regarded as definitively overruled.

Citizenship is a question not of international but of municipal law. The division of the law of citizenship into the *jus sanguinis* and the *jus soli* is a deduction from the division of the jurisdiction of a State into the personal and the territorial. In the civil law, citizenship is by descent. At common law, all those born within the kingdom or legeance of the crown were held subjects; and if the United States have a common law